

REMARKS

Status Of Application

Claims 1-58 were pending in the application; the status of the claims is as follows:

Claims 17-38 are withdrawn from consideration.

Claim 41 is cancelled.

Claims 39, 41 and 58 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 2, 6, 9, 10, 13, 39-42, 46 ,49 ,50, 51 and 58 are rejected under 35 U.S.C. § 102(b) as being anticipated by each of U.S. Patent No. 4,377,609 to Bartoli et al (hereinafter the “Bartoli Patent”) and U.S. Patent No. 3,795,722 to Sassaman (hereinafter the “Sassaman Patent”).

Claims 3, 8, 15, 16, 43, 48, 56 and 57 are rejected under 35 U.S.C. § 103(a) as being unpatentable over each of the Bartoli Patent and the Sassaman Patent in view of applicant’s acknowledged state of the art.

Claims 4, 5, 7, 11, 12, 14, 44, 45, 47, 52, 53 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Drawings

To date, no Notice of Draftsperson’s Patent Drawing Review has been received. Applicants respectfully request receipt of this document when it becomes available. Please note that the original drawings filed in the patent application are "formal" drawings.

Claim Amendments

Claims 1, 2, 5-7, 9, 10 12-14, 40, 42, 45-47, 49, and 51, 53-55 have been amended to more particularly point out and distinctly claim the invention. These changes are not necessitated by the prior art, are unrelated to the patentability of the invention over the prior art, and do not introduce any new matter.

Allowable Subject Matter

The indication that claims 4, 5, 7, 11, 12, 14, 44, 45, 47, 52, 53 and 55 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, is noted with appreciation.

35 U.S.C. § 112 Rejection

The rejection of claims 39, 41 and 58 under the first paragraph of 35 U.S.C. § 112 as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, is respectfully traversed based on the following.

Claims 41 has been cancelled. With regard to claims 39 and 58, the written description states that the panels are "typically made of solid cardboard having a thickness of about 2mm (0.08 in)" (page 8, lines 26-27). This is a substantially rigid material. In addition, figures 6, 7, 13 and 14 all clearly show the fixed portion (108, 208) and the flap (110, 210) retaining their original shape even when biased. This also indicates the use of a substantially rigid material. Therefore, claim 58 is fully supported by the specification and complies with 35 U.S.C. §112.

Accordingly, it is respectfully requested that the rejection of claim 58 under the first paragraph of 35 U.S.C. § 112 as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art

that the inventor(s), at the time the application was filed, had possession of the claimed invention, be reconsidered and withdrawn.

35 U.S.C. § 102(b) Rejection

The rejection of claims 1, 2, 6, 9, 10, 13, 39-42, 46, 49, 50, 51 and 58 under 35 U.S.C. § 102(b) as being anticipated by each of the Bartoli Patent and the Sassaman Patent, is respectfully traversed based on the following.

The Bartoli Patent shows a process for making a foam article with a permeable cover. A cover element 4 is placed in a mold bottom 1. A molding composition 6 is then poured into the covered mold opening and allowed to catalyze and expand. After a sufficient time for expansion of the molding composition, a mold lid 3 covered with a second cover element 5 is pressed onto the surface of the mold bottom 1. The peripheral parts 8 of the cover elements are then removed. The resulting structure is a foam core covered with a permeable fabric.

The Sassaman Patent shows a process for making a structure similar to that of the Bartoli Patent. A molding process is used to fabricate a foam core covered by polyurethane layers 6 and 9.

In contrast to the cited prior art, claim 1 includes:

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first hinge and a first flap, said first flap being divided from said fixed portion by said first hinge, said first flap being continuously pivotable about said first hinge between a first relaxed position and a first biased position ...

Please note that, although the term "hinge" is not specifically used in the written description of the present patent application, the functional aspects of a hinge are clearly described (*e.g.* page 6, lines 8-10). Therefore, the term "hinge" is fully supported by the written description of the present application.

The rejection states that the "term 'hinging axis' does not distinguish the instant article over that of the references since it does not define a structural feature of the pad." The panel of claim 1 includes a "hinge", which is a structural limitation of the claim. The hinge provides a fixed pivot point for the first flap. A flexible material as shown in the cited references may bend at any point. A fixed pivot point allows the article of claim 1 to fit securely into a designated position as shown in figures 6 and 7 of the Applicant's written description. To anticipate, a reference must show, expressly or inherently, every limitation of a claim. MPEP §2131. Neither the Bartoli nor the Sassaman patents shows a "hinge" as provided in claim 1. Because dependent claims include every limitation of the claim from which they depend, a claim that depends from an unanticipated claim is also not anticipated. Therefore, claims 2-16 and claim 39 are also not anticipated by the cited prior art.

Also in contrast to the cited prior art, Claim 40 includes,

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first hinge and a first flap, said first flap being divided from said fixed portion along said first hinge, said first flap being continuously pivotable about said first hinge between a first relaxed position and a first biased position ...

As noted above, an upholstery panel according to claim 40 that includes a "hinge" is neither shown nor suggested by the cited prior art. Therefore, claim 40 and dependent claims 42-58 are patentably distinct from the cited prior art.

Accordingly, it is respectfully requested that the rejection of claims 1, 2, 6, 9, 10, 13, 39, 40, 46, 49, 50, 51 and 58 under 35 U.S.C. § 102(b) as being anticipated by each of the Bartoli Patent and the Sassaman Patent, be reconsidered and withdrawn.

35 U.S.C. § 103(a) Rejection

The rejection of claims 3, 8, 15, 16, 43, 48, 56 and 57 under 35 U.S.C. § 103(a), as being unpatentable over each of the Bartoli Patent and the Sassaman Patent in view of applicant's acknowledged state of the art, is respectfully traversed based on the following.

As noted above, neither the Bartoli nor the Sassaman Patent show or suggest a "hinge" as provided in claim 1. A *prima facie* case for obviousness requires that the references in combination show or suggest all of the claim limitations. MPEP §2143.03. Thus, claim 1 is not obvious over the cited prior art. If a claim is non-obvious, then all claims that depend from that claim are also non-obvious. MPEP §2143.03. Therefore, claim 2-16 and 39 are also not obvious over the cited prior art.

In addition, none of the cited references show or suggest a "hinge" as provided in claim 40. Therefore, claim 40 is not obvious over the cited prior art. Claims 42-58 are dependent upon claim 40. Therefore, claims 42-58 are also not obvious over the cited prior art.

Accordingly, it is respectfully requested that the rejection of claims 3, 8, 15, 16, 43, 48, 56 and 57 under 35 U.S.C. § 103(a), as being unpatentable over each of the Bartoli Patent and the Sassaman Patent in view of applicant's acknowledged state of the art, be reconsidered and withdrawn.

CONCLUSION

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, does not increase the total number of claims, and does not present any multiple dependency claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a

fee, other than the issue fee, is due, please charge this fee to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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APPENDIX**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

The following is a marked-up version of the changes to the claims which are being made in the attached response to the Office Action dated January 28, 2002.

IN THE CLAIMS:

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1. (Twice Amended) An upholstery pad, comprising:

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first [hinging axis] hinge and a first flap, said first flap being divided from said fixed portion [along] by said first [hinging axis] hinge, said first flap being continuously pivotable about said first [hinging axis] hinge between a first relaxed position and a first biased position;

a padding member having a front surface and a back surface, at least a portion of said back surface of said padding member being adhesively attached to said front surface of said panel, wherein said padding member extends across said first [hinging axis] hinge; and

a sheet having a front surface and a back surface, at least a portion of said back surface of said sheet being adhesively attached to said front surface of said padding member;

wherein pivoting said first flap about said first [hinging axis] hinge away from said first relaxed position and toward said first biased position causes a first force to be produced which urges said first flap to be pivoted about said first [hinging axis] hinge toward said first relaxed position.

2. (Once Amended) An upholstery pad, according to claim 1, wherein said first force is at least partially caused by said padding member being placed in tension when said first flap is pivoted about said first [hinging axis] hinge away from said first relaxed position and toward said first biased position.

5. (Once Amended) An upholstery pad, according to claim 3, wherein said first hinge comprises a portion of said panel where said panel is perforated [along a path parallel to said first hinging axis].

6. (Once Amended) An upholstery pad, according to claim 3, wherein said first hinge comprises a portion of said panel where said first flap is detached from said fixed portion [along a path parallel to said first hinging axis].

7. (Once Amended) An upholstery pad, according to claim 3, wherein said first hinge comprises a portion of said panel where said front surface of said panel is scored [along a path parallel to said first hinging axis].

9. (Twice Amended) An upholstery pad, according to claim 1, wherein said panel having a second flap, said second flap being continuously pivotable, with respect to said fixed portion, along a second [hinging axis] hinge between a second relaxed position and a second biased position;

wherein a portion of said padding member extends across at least a portion of said second [hinging axis] hinge; and

wherein pivoting said second flap about said second [hinging axis] hinge from said second relaxed position toward said second biased position causes a second force to be produced which urges said second flap to be pivoted about said second [hinging axis] hinge toward said second relaxed position.

10. (Once Amended) An upholstery pad, according to claim 9, wherein said second force is at least partially caused by said padding member being placed in tension when said second flap is pivoted about said second [hinging axis] hinge away from said second relaxed position and toward said second biased position.

12. (Once Amended) An upholstery pad, according to claim 9, wherein said second hinge comprises a portion of said panel where said panel is perforated [along a path parallel to said second hinging axis]

13. (Once Amended) An upholstery pad, according to claim 9, wherein said second hinge comprises a portion of said panel where said second flap is detached from said fixed portion [along a path parallel to said second hinging axis].

14. (Once Amended) An upholstery pad, according to claim 9, wherein said second hinge comprises a portion of said panel where said front surface of said panel is scored [along a path parallel to said second hinging axis].

40. (Once Amended) An upholstery pad for mounting on a substructure, comprising:

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first [hinging axis] hinge and a first flap, said first flap being divided from said fixed portion along said first [hinging axis] hinge, said first flap being continuously pivotable about said first [hinging axis] hinge between a first relaxed position and a first biased position;

a padding member having a front surface and a back surface, at least a portion of said back surface of said padding member being adhesively attached to said front surface of said panel, wherein said padding member extends across said first [hinging axis] hinge; and

a sheet having a front surface and a back surface, at least a portion of said back surface of said sheet being adhesively attached to said front surface of said padding member;

wherein pivoting said first flap about said first [hinging axis] hinge away from said first relaxed position and toward said first biased position causes a first force to be produced which urges said first flap to be pivoted about said first [hinging axis] hinge toward said first relaxed position and wherein said first flap is positioned in said first biased position when said upholstery pad is positioned in said substructure such that said upholstery pad is maintained in position in said substructure by a frictional force between said upholstery pad and said substructure by said first force.

41. (Cancelled)

42. (Once Amended) An upholstery pad, according to claim 40, wherein said first force is at least partially caused by said padding member being placed in tension when said first flap is pivoted about said first [hinging axis] hinge away from said first relaxed position and toward said first biased position.

45. (Once Amended) An upholstery pad, according to claim 42, wherein said first hinge comprises a portion of said panel where said panel is perforated [along a path parallel to said first hinging axis].

46. (Once Amended) An upholstery pad, according to claim 42, wherein said first hinge comprises a portion of said panel where said first flap is detached from said fixed portion [along a path parallel to said first hinging axis].

47. (Once Amended) An upholstery pad, according to claim 42, wherein said first hinge comprises a portion of said panel where said front surface of said panel is scored [along a path parallel to said first hinging axis].

49. (Once Amended) An upholstery pad, according to claim 40, wherein said panel having a second flap, said second flap being continuously pivotable, with respect to said fixed portion, along a second [hinging axis] hinge between a second relaxed position and a second biased position;

wherein a portion of said padding member extends across at least a portion of said second [hinging axis] hinge; and

wherein pivoting said second flap about said second [hinging axis] hinge from said second relaxed position toward said second biased position causes a second force to be produced which urges said second flap to be pivoted about said second [hinging axis] hinge toward said second relaxed position.

51. (Once Amended) An upholstery pad, according to claim 48, wherein said second force is at least partially caused by said padding member being placed in tension

when said second flap is pivoted about said second [hinging axis] hinge away from said second relaxed position and toward said second biased position.

53. (Once Amended) An upholstery pad, according to claim 48, wherein said second hinge comprises a portion of said panel where said panel is perforated [along a path parallel to said second hinging axis].

54. (Once Amended) An upholstery pad, according to claim 48, wherein said first hinge comprises a portion of said panel where said second flap is detached from said fixed portion [along a path parallel to said second hinging axis].

55. (Once Amended) An upholstery pad, according to claim 48, wherein said first hinge comprises a portion of said panel where said front surface of said panel is scored [along a path parallel to said second hinging axis].